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By Online Portal at <https://foiaonline.gov/foiaonline/action/public/request>

May 25, 2021

Regional Freedom of Information Officer
U.S. EPA, Region 4
AFC Bldg, 61 Forsyth Street., S.W., 9th Flr (4PM/IF)
Atlanta, GA 30303-8960

RE: FREEDOM OF INFORMATION ACT REQUEST Pertaining to Underground Injection (IUC) wells proposed by Burnett Oil Company in or near Big Cypress National Preserve in Florida

Dear FOIA Officer:

I write on behalf of the Conservancy of Southwest Florida (Conservancy) to request disclosure of records pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and 40 C.F.R. § 2.100-2.406. The Conservancy's address is: 1495 Smith Preserve Way, Naples, FL 34102. The Conservancy is a non-profit corporation organized under the laws of the State of Florida.

I. Requested Records and Disclosure Method

Please produce records¹ of the following types in the Environmental Protection Agency's possession, custody or control that relate to permit applications, including for Underground Injection (UIC), associated with oil and gas development proposed by Burnett Oil Company in or near Big Cypress National Preserve in Florida.

Please email responsive records to me at amberc@conservancy.org (or work with me to set up an online platform to transfer the materials such as through OneDrive). Please release responsive records to me on a rolling basis. If you determine that any of the records I've described above are already publicly available, please let me know where to find them.

¹ "Records" means anything denoted by the use of that word or its singular form in the text of FOIA and includes correspondence, minutes of meetings, memoranda, notes, emails, notices, facsimiles, charts, tables, presentations, orders, filings, internal messaging systems, and other writings (handwritten, typed, electronic, or otherwise produced, reproduced, or stored). The Conservancy seeks responsive records in the custody of any Environmental Protection Agency office, including, but not limited to, Agency Headquarters offices.



Conservancy of Southwest Florida has been awarded Charity Navigator's prestigious 4-Star top rating for good governance, sound fiscal management and commitment to accountability and transparency. Charity Navigator is America's largest and most respected independent evaluator of charities.

II. Request for Fee Waiver

The Conservancy requests that the Environmental Protection Agency waive any fee it would otherwise charge for searching for and producing the requested records. FOIA dictates that requested records be provided without charge “if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii); *see also* 40 C.F.R. § 2.107(l)(1). As I explain below, the Conservancy’s requested disclosure meets both requirements.

Please disclose the records requested above regardless of your decision on whether to waive or reduce fees. To expedite disclosure, the Conservancy will, if necessary and under protest, pay fees in accordance with EPA FOIA regulations at 40 C.F.R. § 2.107(c)(1)(iv) for all or a portion of the requested records. *See* 40 C.F.R. § 2.107(l)(4). However, please contact me to discuss the cost of the request prior to incurring charges.

1. Released information concerns the operations or activities of the government.

The records requested here pertain to decisions, operations, and activities of the EPA pertaining to Burnett Oil Company’s permit applications related to proposed new oil and gas development in the Big Cypress National Preserve in Florida. This information is central to an understanding of the EPA’s decision making process and the basis for its decisions pertaining to the review and permitting of Burnett Oil Company’s proposals. Decisions regarding the review and permitting of energy developments, particularly those that could impact natural resources like those found in the Big Cypress National Preserve, are highly controversial public issues in the community. The requested records thus directly concern “the operations or activities of the government.” 40 C.F.R. § 2.107(l)(2)(i).

2. Disclosure of the requested documents will serve the public interest as it is “likely to contribute significantly to the public’s understanding of the operations or activities of the [EPA].” 5 U.S.C. § 552(a)(4)(A)(iii); 40 CFR § 2.107(l)(1). The Conservancy is seeking to promote and protect this public interest through the requested documents. The public interest in the disclosure of these documents is significant, because they pertain to new oil drilling activities within the public lands of the Big Cypress National Preserve. The drilling activities are proposed in wetland and listed species habitats. An understanding of how industrial fluids would be disposed of is of interest. Information that could “support oversight of [an agency’s] operations” is precisely the type of information that Congress considered to have a “high potential for contribution to public understanding.” McClellan Ecological Seepage Situation v. Carlucci, 835 F.2d 1282, 1286 (9th Cir. 1987). “Watchdog” public advocacy groups -such as the Conservancy, which actively monitor and challenge agency actions and policies- help provide this oversight function in our system of government.

The Conservancy is requesting the information as a “watchdog” organization dedicated to providing the public information about government activities, or lack thereof, to protect endangered species and water resources. Congress has recognized the important institutional service “watchdog” groups provide, and expanded FOIA’s fee waiver provision specifically to

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facilitate access to agency records by citizen “watchdog” organizations, which utilize FOIA to monitor and mount challenges to governmental activities. See *Better Gov’t Ass’n v. Department of State*, 780 F.2d 86, 88-89 (D.C. Cir. 1986) (fee waiver intended to benefit public interest “watchdogs”).

Fee waivers are essential to such groups which:

rely heavily and frequently on FOIA and its fee waiver provision to conduct the investigations that are essential to the performance of certain of their primary institutional activities – publicizing governmental choices and highlighting possible abuses that otherwise might go undisputed and thus unchallenged. These investigations are the necessary prerequisites to the fundamental publicizing and mobilizing functions of these organizations. Access to information through FOIA is vital to their organizational missions....

The waiver provision was added to FOIA “in an attempt to prevent government agencies from using high fees to discourage certain types of requesters and requests,” in a clear reference to requests from journalists, scholars and, most importantly for our purposes, nonprofit public interest groups.

Better Gov’t Ass’n, 780 F.2d at 93-94.

3. Disclosure of the requested documents will result in a better understanding of EPA’s policy by the general public.

The requested records are “likely to contribute to” the public’s understanding of government operations and activities. 40 C.F.R. § 2.107(l)(2)(ii). The public does not currently possess comprehensive information regarding the government’s role in addressing public health, and environmental, or other concerns related to the subject of requested records. There is more than a reasonable likelihood that these records have informative value to the public because the community has expressed concern for the activities by Burnett Oil Company, and additional information about the disposal of potentially harmful fluids would also be of interest. See *Citizens for Responsibility & Ethics in Washington v. U.S. Dep’t of Health & Human Servs.*, 481 F. Supp. 2d 99, 109 (D.D.C. 2006).

Disclosure of the requested records will contribute to the understanding of the public at large, as opposed to the understanding only of the Conservancy or a narrow segment of interested persons. The Conservancy disseminates information that it receives from government agencies to its members, partners, and the public through newsletters and its website, www.conservancy.org to increase public awareness and understanding of the project and proposed agency action. Thus, the Agency must presume this disclosure is likely to contribute to public understanding of its subject. 40 C.F.R. § 2.107(l)(2)(iii).

4. The public benefit of releasing these documents is significant. Information that could “support oversight of [an agency’s] operations” is precisely the type of information that Congress considered to have a “high potential for contribution to public understanding.”

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McClellan Ecological Seepage Situation v. Carlucci, 835 F.2d 1282, 1286 (9th Cir. 1987). The material requested in the above-referenced FOIA request should offer important insight into the actions and decision-making process of the EPA regarding review and coordination on the Burnett Oil Company's underground injection proposals. The legislative history of FOIA includes the following:

A requester is likely to contribute significantly to public understanding if the information disclosed is new; supports public oversight of agency operations; or otherwise confirms or clarifies data on past or present operations of the government.

132 Cong. Rec. H9464 (Representatives English and Kindness). *Better Government Associations* arrived at a comparable conclusion. 780 F.2d at 94. This current request clearly meets this standard.

5. The Conservancy has no commercial interest in the requested information. This request is not primarily in the commercial interest of the Conservancy, as it has no commercial interest in these materials. 5 U.S.C. § 552(a)(4)(A)(iii); 40 C.F.R. § 2.107(l)(1), (3). The Conservancy is a non-profit corporation organized under the laws of the State of Florida and recognized by the Internal Revenue Service as a 501(c)(3) organization dedicated to public education about the conservation of natural resources in Southwest Florida. The Conservancy has a long-standing interest in the conservation of endangered species and their habitats, public lands, wetlands, and water resources, and maintains active environmental education, scientific, and policy advocacy programs toward this end.

In summary, application of 5 U.S.C. §552(a)(4) to this request strongly supports a fee waiver. Please waive processing and copying fees pursuant to 5 U.S.C. §552(a)(4). This request for a fee waiver should not be construed as an extension of time in which to reply to this FOIA request.

CONCLUSION

If you determine that portions of any records covered by this request are exempt from disclosure, please separate the exempt portions from the nonexempt portions and provide us with copies of the nonexempt portions. For any records that you determine to be exempt from release, please provide us with a specific description of the record or portion of the record along with a particularized description of the legal basis for withholding it as is required. See *Vaughn v. Rosen*, 484 F.2d 820, 827(D.C. Cir. 1973), *cert. denied*, 415 U.S. 977 (1974).

If any of the documents for which copies are requested of by the Conservancy are available electronically, you may send them to amberc@conservancy.org, or arrange an alternative method to provide them to me electronically. If there are not electronic versions available, please send paper copies to me at the address contained in this request.

If you anticipate any delay for valid legal reasons in processing this request or if you foresee any problem relating to our request for a fee waiver, please notify me as soon as possible at (239) 776-5601. Thank you for your time and consideration in this matter.

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Sincerely,

A handwritten signature in blue ink, appearing to read 'AmC', with a long horizontal flourish extending to the right.

Amber Crooks
Environmental Policy Manager
Conservancy of Southwest Florida